

State of Vermont
Department of Disabilities Aging and Independent Living
Developmental Disabilities Services Division (DDSD)
Guidance on Implementation of the HCBS Final Rule

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Introduction: What is the HCBS Final Rule?

In March 2014, the Centers for Medicare and Medicaid (CMS) adopted the [Home and Community-Based \(HCBS\) Final Rule](#). [The Final Rule](#) intends to “enhance the quality of HBCS and provide additional protections to individuals that receive services...”

[The Final Rule](#) puts into regulation “...integrat[ion] and [the] support [of] full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.” (pg. 3030)

There are 5 basic principles in [the Final Rule](#) to achieve this goal. Individuals have the right to:

- Live in the community with people without disabilities.
- Have a person-centered plan.
- Have freedom.
- Have respect and privacy.
- Not be restrained and secluded.

Community Living

[The Final Rule](#) reinforces that individuals with disabilities can and should be integrated with community. Individuals with intellectual and developmental disabilities have the right to live in the same places as individuals without disabilities. [The Final Rule](#) highlights the importance of autonomy and choice for individuals with intellectual and developmental disabilities. This includes the **choice of where to live** and the **choices of where to get services**.

Person-Centered Planning

[The Final Rule](#) indicates that every individual has the right to a person-centered plan (pg. 3030). Person-centered planning is a key attribute of [the Final Rule](#). This process must be led by the individual or the individual’s representative. This process:

- Includes people chosen by the individual/individual’s representative.
- Provides necessary information and support to ensure that the individual directs the process and is able to make informed decisions and choices.

- Is timely and occurs when and where it is convenient for the individual.
- Reflects the cultural considerations of the individual.
- Is conducted with information in plain language.
- Includes strategies for solving conflict within the process, including clear conflict of interest guidelines for all participants.
- Has an independent case manager to develop the person-centered plan.
- Offers informed choice to the individual regarding the services and supports that they can receive and from whom.
- Includes a method for the individual to receive updates to the plan.
- Records the alternative home and community-base settings that were considered by the individual.

Additionally, the person-centered plan needs to incorporate the services and supports that are necessary and important to the individual to meet the needs identified through the Needs Assessment and the Individual Support Agreement processes.

The person-centered plan must include the individual's strengths and preferences, the clinical and support needs, and identified goals and desired outcomes. [The Final Rule](#) indicates that this plan must be written in plain language and be accessible to the individual and anyone supporting them.

Modification of [Final Rule](#)

If it is appropriate to modify conditions of [the Final Rule](#), this must be documented in the person-centered plan. Modifying conditions of [the Final Rule](#) should only be done to address an individual's physical, mental, or emotional health or safety. This can only be done by:

- Identifying the specific and individual need.
- Documenting the previous positive interventions and supports the individual used prior to modifying the condition of [the Final Rule](#).
- Documenting less intrusive methods of meeting the need that have been tried but did not work.
- Including a clear description of the condition that is directly proportionate to the specific assessed need.
- Including a regular collection and review of data to measure ongoing effectiveness of the modification.
- Including established time limits for periodic reviews to determine if the modification is still necessary or if it can be terminated.
- Including informed consent of the individual.
- Including assurances that the interventions and support will cause no harm to the individual.

Settings Rule

What has become known as “The Settings Rule” is §441.301(c)(4)(i-v) *Home and Community Based Settings* of [the Final Rule](#). §441.301(c)(4)(iv) addresses provider-owned or controlled residential settings. This section seeks to ensure that individuals have full access to residential opportunities that support integration in the greater community through settings that:

- Are chosen from options that include non-disability specific choices.
- Ensure individual rights of privacy, dignity, and respect.
- Ensure the home protects the individual’s freedom from coercion and restraint.
- Optimize individual autonomy and independence in choices, activities, physical environment and with whom to interact.
- Facilitate individual choice regarding services and supports and who provides them.
- Have the same responsibilities and protections from eviction that other tenants have under VSA Title 9 Chapter 137 [Vermont’s Residential Agreements](#) through a legally enforceable agreement.
- Provide privacy in an individual’s personal space (bedroom or living unit).
- Have a bedroom or living unit with locks on doors for privacy, with only appropriate staff with key.
- Provide choice of roommates, when sharing a unit.
- Allow individuals to decorate their personal space and living area within the lease or other agreement.
- Provide individuals the freedom and support to control their own schedule and activities.
- Provide individuals access to food of their choosing at any time.
- Ensure individuals can have visitors of their choosing at any time.
- Is physically accessible.

As noted in the **Modification of** Final Rule section (on page 2), these above rights may only be altered if it relates to an individual’s physical, mental, or emotional health or safety. Modification of the Rule can only occur:

- After other, less intrusive methods of addressing the health or safety concern have been attempted;
- The individual and team have met to discuss the modification and the individual gives informed consent;
- There is a clear plan with defined timelines to revisit the interventions and support; and
- The approaches will not harm the individual.

This all must be documented in the individual's **Person-Centered Planning** document.

Included Settings

Residential living arrangements in Vermont that are a provider-owned or controlled residential setting and are funded through Developmental Disabilities Home and Community-Based services, must comply with this rule. In Vermont, these settings include Staffed Living, Group Living, Shared Living (i.e., with a Shared Living Provider), and Supervised Living arrangements when the agency owns or leases the home setting. Home settings that are not considered to be provider-owned or controlled, and are thus excluded from this rule, include situations where people live independently without paid home supports or with an unpaid family member.

Excluded Settings

[The Final Rule](#) specifies settings that are not considered to be Home and Community-Based Settings (pg. 3031). These include:

- Nursing facilities.
- Institutions for mental disease.
- Intermediate Care Facilities for Individuals with Intellectual/Developmental Disabilities (ICF/IDD).
- Hospitals.
- Any other locations that have qualities of an institutional settings, as determined by the Secretary [of Health and Human Services].

Settings that have qualities of an institutional setting are settings that provide inpatient treatment (public or privately funded), building on the grounds of or immediately adjacent to public institutions, and settings that have the effect of isolating individuals from the larger community of individuals not receiving Home and Community-Based Services.

The settings, while potentially eligible for Medicaid dollars, are not eligible for Home and Community-Based Services funding.

It is also important to note that the community crisis resources (i.e., Vermont Crisis Intervention Network beds, Intensive Transition Support beds, and collaborative crisis beds) are not subject to the Settings Rule as they are temporary crisis beds, not an individual's residence.

Heightened Scrutiny

Heightened Scrutiny is the process to review specific settings to determine if they meet the standards laid out in [the Final Rule](#): “The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individual not receiving Medicaid HCBS.” (pg. 3030).

If a setting raises concerns about compliance with [the Final Rule](#), it would be subject to heightened scrutiny to continue to receive Developmental Services Home and Community-Based Services funding. This process, performed by the DDS Quality Management Unit, ensures that the setting meets the Settings Rule requirements, despite concerns that the setting might have qualities of an institution or be isolating to residents.

Using the heightened scrutiny process, the State team collects information to determine if the setting is home and community-based and does not have the qualities of an institution. Any setting subject to [the Final Rule](#) could be require heightened scrutiny and needs to demonstrate that individuals who reside there are incorporated into the larger community, have the opportunity to engage in competitive, integrated employment, and control their personal resources.

Lease and Lease-like Agreements

As noted in the **Settings Rule** section, individuals have the right to a lease or lease-like agreement, when residing in a provider-owned setting. This includes:

- Staffed Living.
- Group Living.
- Shared Living (i.e., with a Shared Living Provider), and
- Supervised Living arrangements when the agency owns or leases the home setting, or contracts.

The lease/agreement must provide the same protections any other tenant is afforded through protections from eviction that other tenants have under VSA Title 9 Chapter 137 [Vermont’s Residential Agreements](#). Under this same law, individuals living in these settings are held to the same responsibilities as all other renters in Vermont.

Locks on Doors for Privacy

[The Final Rule](#) indicates that “units have entrance doors lockable by the individuals, with only appropriate staff having keys to doors”. (pg. 3031) In addition to locks on bedroom (personal unit) doors for privacy, bathroom doors must have locks for privacy.

It is the individual’s right to have the lock on the door for privacy. Equally, it is the individual’s right to choose not to use the lock. If the individual does not want to exercise the right to use the lock, it does not remove the requirement of the provider from installing a lock.

Any modification of this right would need to be based on a physical, mental or emotional health or safety need and follow the person-centered planning process.

See the **DDSD Locks on Doors for Privacy Guidance** for detailed information.

Designation and Quality Services Review Process

As part of the four-year designation and periodic quality service review processes, the DDSD Quality Management Team will survey individuals receiving services, guardians, and agency staff, asking specific questions to validate compliance with the Settings Rule. Additionally, during in-person visits, Quality Management staff can gather information to determine compliance (e.g., observe locks on doors for privacy, ability to decorate space).

If there are areas that are determined to be out of compliance, the Quality Management Team will work with the agency to submit a Corrective Action Plan. Corrective Action Plans will be reviewed, accepted, and monitored for effectiveness with each quality services review.

Failure to address deficiencies identified in the quality services review will potentially affect the agency’s designation status and could be considered material non-compliance related to the Provider Agreement.

Additional Resources

Agency of Human Services, Department of Disabilities, Aging and Independent Living, Developmental Disabilities Services Division, Home- and Community-Services Settings Rules Residential Settings Locks on Doors for Privacy Guidance: [Locks On Doors Guidance FINAL.pdf \(vermont.gov\)](#)

Agency of Human Services, Department of Disabilities, Aging and Independent Living, Developmental Disabilities Services Division, Home and Community Services Home and Community Based Services (HCBS) Transition Plan: [Home and Community Based Services \(HCBS\) Transition Plan | Developmental Disabilities Services Division \(vermont.gov\)](#)

Autistic Self-Advocates Network: [The Home and Community Based Settings Rule \(HCBS Settings Rule\): What It Is, Why It Matters, And How to Advocate for It - Autistic Self Advocacy Network \(autisticadvocacy.org\)](#)

Green-Mountain Self-Advocates: [HCBS Settings Rule - Green Mountain Self-Advocates \(gmsavt.org\)](#)

State of Vermont—Department of Disabilities, Aging and Independent Living/Developmental Disabilities Services Division Settings Rule Bill of Rights: [Settings Rule Bill of Rights pdf.pdf \(vermont.gov\)](#)